transaction. The learned District Judge found that it did. Again, on the evidence before him, he was justified in making this finding. First, Benly's representative, Wee, in effect, introduced the appellants to the respondents and Wee went with DW 1 to meet PW 2. In this own words, he accompanied the respondents to see the appellants to assist the respondents to get a loan. Secondly, Benly, through Wee, sold the vehicle to the appellants with a view to the latter letting it on hire purchase to the respondents and received the deposit of $5,000 from the respondents. He also arranged for the respondents to take over the insurance of the vehicle. It is significant that Wee executed the hire purchase agreement as a guarantor of the respondents, though he did so in his personal capacity and not as a representative of Benly. We are of the view that Benly, by these acts of Wee, did arrange the hire purchase transaction leading to the hire purchase agreement.

Accordingly, there had been no breach by the appellants of section 30(1) of the Act. This appeal therefore succeeds. We set aside the order made by the High Court and restore the order made by the learned District Judge. The costs of this appeal and the appeal to the High Court are to be paid by the respondents. There will be the usual consequential order for the refund to the appellants of the deposit paid into court as security for the costs of the respondents.

Appeal allowed.

Solicitors: *Y.H. Cheong; Ganesan Carlose & Partners.*

UNITED OVERSEAS BANK LIMITED v. YAUW ENTERPRISE LTD.

[O.C.J. (Chua J.) 1 March 1988]

[Singapore – Originating Summons No. 1204 of 1987]

Land Law – Sale and purchase of units in building – Shortfall in floor area – Claim for compensation for shortfall.

The plaintiffs agreed to purchase certain units of a building from the defendants. The floor area to be purchased included the mezzanine floor which was to be sold at $300 per sq. ft. Certain sums of money were also paid towards the purchase price. Thereafter, a shortfall in the actual floor area of the mezzanine floor area was discovered and the plaintiffs claimed compensation by way of an abatement of the purchase price together with interest.

Held: the defendants were entitled to an adjustment and the purchase price of the mezzanine floor at $300 per sq. ft. should be increased by 571.88 sq. ft. amounting to $171,564.00.

ORIGINATING SUMMONS.

Cheo Chai Beng for the plaintiffs.

Lai Lay Kim for the defendants.

Cur. Adv. Vult.

Chua J.: In 1979 by letter dated 20 November, the plaintiffs agreed to grant credit facilities amounting to $2.9 million to the defendants to be utilized to finance the construction of the proposed development of a six-storey office/shop building known as GSM Building ("the building"). Under paragraph 7 of the said letter, as one of the conditions for the granting of the credit facilities, the plaintiffs were to be given first priority of choice over the purchase of premises in the building to be used as bank premises at an agreed maximum selling price.

Negotiations were conducted between the plaintiffs and the defendants regarding the purchase by the plaintiffs of premises in the building. The plaintiffs had first negotiated to purchase three units in the building with a total area of 4,004.28 sq. ft. on the ground floor at the price of $500 per sq. ft. and 3,195.52 sq. ft. on the mezzanine floor at the price of $300 per sq. ft. Later, the plaintiffs requested for more accommodation space to meet the requirements of the banking hall.

Subsequently by letter dated 27 September 1980, the defendants informed the plaintiffs that the exact floor area of the premises to be purchased by the plaintiffs was as follows:

"Ground Floor	2,200	sq. ft. at $500 psf =	$1,100,000.00
Additional Ground Floor	1,825.20	sq. ft. at $570 psf =	$1,040,364.00
Sub-Total	4,025.20	sq. ft. =	$2,140,364.00
Mezzanine Floor	3,195.52	sq. ft. at $300 psf =	958,656.00
Total	7,220.72	sq. ft. =	$3,099,020.00"

The letter also requested for payment of $154,951 being 5% of the purchase price for the premises as booking fee.

On 10 November 1980, the plaintiffs signed an option to purchase ("option") the said premises and paid the booking fee of $154,951.

The plaintiffs subsequently exercised the option and entered into an agreement for the sale and purchase of the said premises ("the agreement") which is now known as unit #01-01 ("the unit") of GSM Building on 24 April 1981.

The subsidiary strata certificate of title ("SSCT") of the unit was issued on 29 March 1984. In the SSCT, the area of the unit was stated to be 703 sq. m. (7,567.092 sq. ft.) with the mezzanine floor shown in the certified plan annexed thereto to be of an area of 350 sq. m. (3,767.4 sq. ft.).

Pursuant to the SSCT, the defendants' solicitors, by letter dated 22 May 1984 to the plaintiffs' solicitors, demanded that the plaintiffs pay a sum of $823,020.78 to the defendants in order to complete the sale and purchase of the unit. The letter set out the completion account as follows:

"Balance of the purchase price (clause 4(2)(b) of the agreement)	$774,755.00
Fees for government survey and plans	$ 5,241.34
Outstanding maintenance charges	$ –
Outstanding interest for late payment	$ –
Add: Difference in area for mezzanine floor based on: New area: 3,767.40 sq. ft. (350 sq. m.) minus old area: 3,195.52 sq. ft. = 571.880 sq. ft. @ $300 per sq. ft.	$171,564.00
	$951,560.34
Less: Difference in area for ground floor based on: Old area: 4,025.20 sq. ft. minus new area: 3,799.692 sq. ft. (353 sq. m.) = 225.508 sq. ft. @ $570 per sq. ft.	$128,539.56
	$823,020.78"

On 16 June 1984, the plaintiffs' solicitors wrote to the defendants' solicitors forwarding a cashier's order for $651,456.78 in payment of the amount which the plaintiffs had calculated to be due to the defendants "pending negotiations over the void area" and setting out the plaintiffs' computation as follows:

"Balance of purchase price (clause 4(1)(1) of the agreement)	$774,755.00
Fees for government survey and plans	5,241.34
	$779,996.34
Less difference for ground floor	128,539.56
	$651,456.78"

By letter dated 23 July 1984, the defendants' solicitors pointed out to the plaintiffs' solicitors that the area of the mezzanine floor shown on the certified plan annexed to SSCT was 350 sq. m. (3,767.4 sq. ft.). They drew attention to clause 26 of the agreement which reads:

> "The area of the said unit as mentioned in the Schedule hereto is only an estimate. In the event of any difference in the area on completion of government resurvey of the said unit, the purchase price shall be adjusted insofar as the area upon survey is more or less than the estimated area by 5%. The actual area on resurvey is to follow the surveyed areas shown on certified plans approved by the Chief Surveyor."

and said that the defendants were entitled to claim for an adjustment of the purchase price based on the surveyed areas as shown on the certified plans annexed to the SSCT and demanded the payment of the balance sum of $171,564.00 together with interest for late payment at the rate of $56.40 per day pursuant to the agreement from 4 June 1984 to date of payment.

On 21 September 1984, the plaintiffs' solicitors wrote to the defendants' surveyors Messrs. How Huai Hoon ("the surveyors") and to the Chief Surveyor about the area of the unit.

Messrs. How Huai Hoon's reply was:

> "We wish to confirm that the area of unit 01-01 is 703 sq. m. comprising of 353 sq. m. on the first storey and 350 sq. m. on the second storey. Please note that the area of the second storey is inclusive of the void area and is computed in accordance with rules and regulation stipulated by Chief Surveyor."

The Chief Surveyor's reply reads:

> "We confirm that the strata area of lot 332/U2 TS 11 shown on STRT 1249 is inclusive of the void space on the second storey. This intention is in accordance with the building plan's colour edging *vide* approved plans C/E/F in DC 51/1/79. The said unit is having the exclusive use of the void space."

On 12 February 1986, the plaintiffs' solicitors informed the defendants' solicitors that in view of the dispute between the parties, they would have to resort to the courts and that the surveyors should be instructed to calculate the actual floor area and the void area of the unit based on the plans annexed to the SSCT. The plaintiffs' solicitors duly instructed the surveyors. The surveyors on 28 February 1986 supplied plans of the unit which showed that the actual floor area of the mezzanine floor was only 255 sq. m. (2,744.82 sq. ft.) instead of the 3,195.52 sq. ft. as specified

in the agreement, giving rise to a shortfall of 450.7 sq. ft. or 14% difference in the area contracted.

On 8 March 1986, the plaintiffs' solicitors wrote to the defendants' solicitors informing them of the shortfall in area and requesting a refund of $135,210 being an abatement of the purchase price paid by the plaintiffs to the defendants pursuant to the agreement.

A further demand was made by the plaintiffs for payment and on the defendants' solicitors' failure to respond to those demands, the plaintiffs brought the present proceedings on 9 October 1986 in which they seek the following reliefs:

"1. An order that the sum of $135,210 being part of the purchase price paid by the plaintiffs to the defendants pursuant to the said agreement be repaid by the defendants to the plaintiffs as compensation by way of an abatement of the purchase price together with interest from 16 June 1984 to the date of repayment or judgment at such rate as the court shall think fit.

2. A declaration that the defendants be precluded from claiming from the plaintiffs a further sum of money being an adjustment of the purchase price pursuant to clause 26 of the said agreement.

3. A further declaration that the plaintiffs have wholly performed their obligations and complied with all the terms and conditions of the said agreement.

4. An order that the defendants may be ordered to pay the costs of and incidental to this application."

The plaintiffs, however, have subsequently obtained a resurvey plan which shows a floor area of 267 sq. m. (2,873.99 sq. ft.) for the mezzanine floor instead of 3,195.52 sq. ft. as specified in the agreement. Accordingly, there is a shortfall of 321.53 sq. ft. or 10.06% difference.

Prayer 1 of the summons was subsequently amended by the plaintiffs to a claim for a sum of $96,459 instead of $135,210.

The first issue is whether the void space between the mezzanine floor and the ground floor of 571.88 sq. ft. is to be included in the computation of the purchase price.

The contention of the plaintiffs is that the agreement was concluded between the parties on the mutually agreed basis that the purchase price was to be computed on the actual floor area of the unit.

During the negotiations stage, the plaintiffs wanted to purchase what was actually three separate shop units consisting of the ground floor and the mezzanine floor. It was the plaintiffs' intention to convert the three units into one to serve their use as a bank. Plans were drawn on the instructions of the plaintiffs and the three units have now become one single unit. The plaintiffs wanted a bigger space above the ground floor to serve as the bank hall thereby creating the void space between the mezzanine floor and the ground floor. The discussions were concluded on a set of plans which were accepted and approved by the plaintiffs and annexed to the agreement.

Clause 3 of the agreement clearly spelt out the total area of the ground floor as 4,025.20 sq. ft. and the mezzanine floor as 3,195.52 sq. ft. Clause 3 reads:

"The purchase price shall be dollars three million ninety nine thousand and twenty only ($3,099,020.00) which is calculated at the rate of dollars five hundred ($500.00) per square foot (2,200 sq. ft. for ground floor), dollars five hundred & seventy ($570.00) per square foot (1,825.20 sq. ft. for additional ground floor) and dollars three hundred ($300.00) per square foot (3,195.52 sq. ft. for mezzanine floor)."

It seems to me that it was the intention of the contracting parties to sell and to purchase the entire three units with the area as set out in clause 3 of the agreement. If, as contended by the plaintiffs, both parties had intended not to include the void space in their measurements, then, it seems to me, the area of the mezzanine floor as stipulated in clause 3 could not have been set out to be 3,195.52 sq. ft. (296.86 sq. m.).

If the three units had not been sold to the plaintiffs, they would probably have been sold to separate purchasers and the defendants would have been paid for the 571.88 sq. ft. The plaintiffs contend that they have no use for the void space, but they are in fact enjoying the void space as the banking hall has a higher ceiling constructed at their request and they do not now want to pay for it.

The plaintiffs are not correct in their contention that the basis for computation of the price for the unit is on the actual floor area.

I am, therefore, of the view that the void space of 571.88 sq. ft. is to be included in the computation of the purchase price.

The second issue is the defendants' claim for $171,564.00 being the difference in area for the mezzanine floor of 571.88 sq. ft. at $300 per

sq. ft. as set out in their letter of 22 May 1984 to the plaintiffs' solicitors.

The defendants' claim is based on the plan annexed to the SSCT and in pursuance of clause 26 of the agreement.

The plaintiffs are resisting this claim. They say that the law is clear that if there is a misdescription against or to the prejudice of the vendor in that the property is greater than that stated in the contract, the vendor cannot claim by way of compensation or adjustment of the purchase price. Counsel for the plaintiffs cited a number of cases in support of this contention.

In the present case, however, under the agreement both parties have expressly agreed under clause 26 for an adjustment in the purchase price should there be a difference in the final area. This right extends to both the vendor and the purchaser. There is also a difference in the area for the ground floor based on the SSCT. The area in the SSCT is smaller than the area in the agreement for the ground floor and the defendants have made, and the plaintiffs have accepted, full compensation in the sum of $128,539.56.

The prices of the three units were not quoted in lump sums but were sold on a per square foot basis. The parties had agreed by clause 26 of the agreement to adjust the purchase price in the event of any difference in the area upon government resurvey of the unit on a per square foot basis and to submit themselves to the surveyed areas shown on certified plans approved by the Chief Surveyor and not any other surveyor. The area stated in the certified plans of the Chief Surveyor annexed to the SSCT is final.

In my view, the defendants are entitled to an adjustment and the purchase price of the mezzanine floor at $300 per sq. ft. should be increased by 571.88 sq. ft. amounting to $171,564.

In the result, the plaintiffs' application is dismissed with costs and there will be judgment for the defendants against the plaintiffs in the sum of $171,564 and costs.

Order accordingly.

Solicitors: *Shook Lin & Bok; Goh Choo Eng & Co.*

BRUNEI REPORT

NBT (BRUNEI) SDN. BHD. v. SYARIKAT LAJU MOTOR SDN. BHD.

[A.C.J. (Sears J.) 22 September 1987]

[Bandar Seri Begawan – Suit No. 389 of 1986]

Civil Procedure – Independent debt not satisfied – Method of satisfying judgment – R.S.C., O. 40 rr. 28 & 30.

The plaintiffs obtained judgment against the defendant company on 8 January 1987. That judgment was an ordinary regular judgment, nothing being said in the judgment as to when the judgment debt should be paid. However, when the judgment debt was not satisfied, the plaintiffs issued a judgment debtor summons. This is the procedure provided for in the Rules of the Supreme Court in Order 40 rule 30. The court made an order on 8 June 1987 that the judgment debt be paid in instalments.

The plaintiffs applied for leave under Order 40 rule 28 of the Rules of the Supreme Court. The Chief Registrar refused leave and the present appeal was made *ex parte*. The plaintiffs submitted that although application for leave was stated as made under Order 40 rule 28, for all practical purposes it was also made pursuant to Order 40 rule 30(4).

Held, dismissing the appeal: (1) leave is required from a court when the judgment is to be enforced under Order 40 rule 28 and leave is given when it is clear that there has been wilful disobedience by a party to such a judgment or order;

(2) the provisions of Order 40 rule 30 permit the examination of judgment debtors and the subsequent making of an order. Within Order 40 rule 30 is found the method of enforcement of that order. No leave is required if a party disobeys, for example, an instalment order. Although the plaintiffs have obtained an instalment order against the company, they have not sought to make an application under rule 30(4);

(3) the present application was simply an application for leave under Order 40 rule 28. The court cannot find any judgment or order made against the defendant company which has been wilfully disobeyed;

(4) leave to appeal was refused.

APPEAL FROM REGISTRAR'S DECISION.

Irene Appaduray (Ms) for the plaintiffs.

Cur. Adv. Vult.

Sears J.: This is an appeal against the decision of the Chief Registrar refusing leave under Order 40 rule 28 of the Rules of the Supreme Court. The application before the Chief Registrar was made *ex parte* as is this appeal before me. The factual background to the application is short.

The plaintiffs obtained judgment against the defendant company on 8 January 1987. That was